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Reports of Malaysian Cases

DETERMINED BY

THE HIGH COURTS

AND BY

THE FEDERAL COURT

AND

ON APPEAL THEREFROM TO THE YANG DI-PERTUAN AGONG

FOR THE OPINION OF THE

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

RE MAN BIN MIHAT, DECD.

[O.C.J. (Suffian J.) January 2, 1965]

[Alor Star — Motion in Petition for Letters of Administration No. 42 of 1964]

Administration — Insurance policy — Assignment to beneficiary — Whether money payable belongs to beneficiary or forms part of estate.

Insurance — Life insurance policy — Provision for payment on death to named beneficiary — Assignment to beneficiary — Civil Law Ordinance, 1956, ss. 23 and 25.

Muslim law — Gift of benefits of insurance policy to widow — Whether widow can take beneficially.

The assured had taken out an insurance policy on February 20, 1962 for $40,000 on his life and by the terms of the policy the insurance company agreed to pay that sum at the end of twenty five years from the commencement of assurance or the previous death of the assured to the assured or to his assigns if he be living at the maturity of the policy or in the event of his death to the beneficiary named in the policy. The assured by an instrument dated March 26, 1962 named his wife as the beneficiary. On the death of the assured his widow took out letters of administration to his estate. The question then arose whether the money payable under the policy belonged to her beneficially or formed part of her husband's estate, to be distributed among his heirs.

Held: (1) by virtue of section 23 of the Civil Law Ordinance as the policy of assurance was effected by the assured on his own life and expressed to be for the benefit of his wife, the moneys payable under the policy did not form part of the estate of the deceased;

(2) Muslim law does not disentitle the widow to take beneficially as it is lawful for a Muslim to dispose off his property during his life time by way of a gift or through trustees.

Per Suffian J.: "Muslim law rigidly prescribes the share of every heir and no alteration of these shares may be made by will, for a bequest to an heir requires the consent of all co-heirs and a bequest to strangers may not take effect beyond 1/3 of the testator's estate, but there are no restrictions beyond these two limitations. So it is lawful for a Muslim to alter the prescribed shares of his heir by disposing outright during his lifetime part or the whole of his property to a favoured wife, either directly by way of a gift *inter vivos* or indirectly through trustees. If there is no legal objection to a Muslim altering his heir's share by himself during his lifetime making a gift through trustees to a favoured wife, in my judgment equally there should be no objection in principle to the validity of a similar gift made not by himself but by statute."

[**Editorial Note:** In *Sadiq Ali* v. *Zahida Begam* (7) a husband assigned policies of insurance to his wife by a valid endorsement "in consideration of natural love and affection [I] do hereby assign the benefit of all moneys to become payable under this...." It was contended that the assignment amounted to a gift, and it was invalid under the Muslim law. The validity of the assignment was attacked on two grounds namely that it was a gift *in futuro* and a contingent gift. The High Court (Thom C.J. and Ganga Nath J.) in the course of its judgment said, "It is essential for the validity of a gift that there should be: (1) a declaration of the gift by the donor, (2) an acceptance of the gift, express or implied, by or on behalf of the donee, and (3) delivery of possession of the subject of the gift by the donor to the donee. Where a person has assigned his right to receive money under insurance policies and the assignee has stated on oath that the policies were handed over to her and she accepted them, the gift is complete as soon as these conditions were complied with. The mere fact that the money was to be realised in future is not enough to make it a gift *in futuro*. Valid gifts can be made of actionable claims"].

Cases referred to:—

(1) *In re Ioakimidis Policy Trusts* [1925] Ch. 403.

(2) *In re Fleetwood's Policy* [1926] Ch. 48.

(3) *In re Equitable Life Assurance Society of the United States and Mitchell* (1911) 27 T.L.R. 213.

(4) *D'Avigdor-Goldsmid* v. *Inland Revenue Commissioners* [1933] A.C. 347.

(5) *Westminister Bank Ltd.* v. *Inland Revenue Commissioners* [1958] A.C. 210.

(6) *In re Ismail bin Rentah* [1940] M.L.J. 98.

(7) *Sidiq Ali* v. *Zahida Begam* A.I.R. 1939 All. 744.

MOTION.

Ong Huck Lim and *Oo Gin Sun* for the widow applicant.

Asst. Registrar for guardian *ad litem.*

Cur. Adv. Vult.

Suffian J.: On 20th February 1962 Man bin Mihat took out an insurance policy for $40,000 on his life and by the terms of the policy the insurance company agreed to pay that sum "at the end of 25 years from commencement of

assurance or the previous death of the assured" to

"the assured or his assigns if he be living at the maturity of the policy. In the event of the death of the assured before the maturity of the policy the Company shall pay the monies hereby assured to the beneficiary named below if then living or to other the beneficiary appointed by the assured as hereinafter provided if then living, unless prevented by an assignment or other act or thing done or suffered by the assured during his lifetime and provided there is no statutory or other lawful restriction to the contrary. Provided always that the assured may at any time by writing signed by him and delivered at the head office of the Company at Singapore revoke the appointment of the beneficiary named below and may appoint another beneficiary with or without reserving the right of revocation or new appointment. Notwithstanding anything hereinbefore contained it is hereby agreed and declared that the assured may assign charge surrender or otherwise deal with this policy without the consent of the beneficiary whether named in this policy or subsequently appointed by the assured hereunder."

The beneficiary named in the policy was "Chik binti L. Man, wife of the assured."

Then by an instrument dated 26th March 1962 the assured assigned the policy to the same Chik his wife in these terms:—

"I, Man bin Mihat in consideration of natural love and affection do hereby assign the benefit of all moneys to become payable under the Policy of Assurance No. 216, 296 of THE GREAT EASTERN LIFE ASSURANCE COMPANY, LIMITED, on my life, dated the 20th day of February 1962 assuring the sum of $40,000 (reserving, however, to myself the right to receive in cash or apply in reduction of premia any bonuses that may be declared upon such policy from time to time as I may think fit) to Chik binti L. Man (wife) and declare that Chik binti L. Man's receipt shall be sufficient discharge to the Company for the same provided however that in the event of the said Chik binti L. Man predeceasing me, or in the event of my surviving the date on which the said policy if so expressed would mature, the benefit of the policy and the right to receive moneys thereunder shall revert to me as if this Assignment had not been made.

Dated at Alor Star, Kedah this 26th day of March 1962."

On 6th January 1963 Man died and his widow is the administratrix of his estate. The question arises whether the money payable under the policy belongs to her beneficially or forms part of her husband's estate in which event it falls to be distributed among his heirs, of whom there are two, his widow and a minor son.

It is contended on behalf of the widow that it does not form part of the estate and on behalf of the infant by his guardian *ad litem*, the Assistant Registrar of this court, that it does.

There is little doubt that if the parties were non-Muslims the money would not form part of the estate, for section 23 of the Civil Law Ordinance, 1956 (modelled on section 11 of the English Married Women's Property Act, 1882), expressly provides:—

"(1) A policy of assurance effected by any man on his own life and expressed to be for the benefit of his wife....shall create a trust in favour of the objects therein named, and the moneys payable under any such policy shall not so long as any object of the trust remains unperformed form part of the estate of the insured or be subject to his....debts."

(2) .....

(3) The insured may by the policy....appoint a trustee.....

(4) In default of any such appointment of a trustee such policy immediately on its being effected shall vest in the insured and his....legal personal representatives in trust for the purposes aforesaid."

There are other sub-sections but they are not relevant.

Though the sum assured is payable on Man bin Mihat's surviving 25 years or his previous death and therefore it would have been immediately payable if he had survived the 25 years, nevertheless it is a policy effected "on his own life" within section 23(1), *In re Ioakimidis' Policy Trusts.*[1] There a husband effected a life or twenty years' endowment policy with an insurance society, the money being payable on his death or on his surviving the twenty years. The policy was expressed to be for the benefit of his wife if he died within the twenty years leaving her surviving, otherwise for the benefit of himself or his estate. He died within the twenty years leaving his wife surviving. It was held that in the event that had actually occurred a valid trust for the wife was created within the corresponding English provision.

Therefore I am of the opinion that here too this policy would have created a trust in favour of the wife if a non-Muslim and immediately on its being effected it vested, as provided for by sub-section (4) of section 23, in the insured or his legal personal representative for the purposes of the trust.

I am further of the opinion that the subsequent assignment has made no difference because even if the policy had been assigned to a third person (here it was assigned to the wife herself) that person could only receive the policy money subject to the statutory trust in favour of the wife, *In re Fleetwood's Policy.*[2] There a husband took out an insurance policy for £500 on his life, and by the terms of the policy the insurance company agreed to pay that sum to the insured's wife, if she were living at his death, or in the event of her prior death to pay it to the insured's executors, administrators and assigns. The policy contained a proviso that, if at the end of twenty years the insured was still living, he should have the right to exercise any of six options. The insured being then still living, he exercised an option to receive the entire cash value of the policy with its share of accumulated profits and to discontinue the policy. A sum of £288 thus became payable. It was held that while under the policy certain options were to belong to the insured, yet as there was a

beneficiary (the wife) under the policy in addition to the insured, all the options of the insured under the policy must be treated as exercised by him as trustee or as absolute owner, according as he or the beneficiary ultimately became entitled to the benefit of the policy. Tomlin J. cited with approval a passage from the judgment of Swinfen Eady J. in an earlier case *In re Equitable Life Assurance Society of the United States and Mitchell* [3]:

"So long as any objects of the trust remained unperformed the trusts could not be defeated, and the options must be exercised in the best manner for the benefit of those entitled."

Similarly here too even if the policy had been assigned by the husband to a third person, not the wife, because the statutory trust created by the policy in favour of the wife still remains unperformed the trust cannot be defeated and the policy money cannot form part of the husband's estate.

But the husband and wife here are Muslims and section 25 of the Civil Law Ordinance goes on to provide:—

"Nothing in this part [including section 23] shall affect the disposal of any property according to Muslim law."

Does this disentitle the wife from taking this money beneficially?

I am of the opinion not.

Muslim law rigidly prescribes the share of every heir and no alteration of these shares may be made by will, for a bequest to an heir requires the consent of all co-heirs and a bequest to strangers may not take effect beyond ⅓ of the testator's estate, but there are no restrictions beyond these two limitations. So it is lawful for a Muslim to alter the prescribed shares of his heirs by disposing outright during his lifetime part or the whole of his property to a favoured wife, either directly by way of a gift *inter vivos* or indirectly through trustees. If there is no legal objection to a Muslim altering his heir's share by himself during his lifetime making a gift through trustees to a favoured wife, in my judgment equally there should be no objection in principle to the validity of a similar gift made not by himself but by statute.

Indeed it is quite common for a Muslim to buy land for his minor children and have himself registered in the Land Office records as trustee, though the effect would be to augment the share received by those children in his property after his death. During his lifetime the land is trust property and his death does not alter its character, for thereafter the land remains trust property and his administrator holds it for the purposes of the trust. In my judgment the statutory trust created in favour of the wife in the instant case also retains its character as a trust after his death, and for so long as any object of the trust remains unperformed the trust cannot be defeated and may, if necessary, be enforced by the widow. The beneficial interest in the policy belonged to the wife since the date of the taking out of the policy and no beneficial interest in it accrued or arose on the death of the husband, *D'Avigdor-Goldsmid* v. *Inland Revenue Commissioners*,[4] and *Westminister Bank Ltd.* v. *Inland Revenue Commissioners*.[5]

I do not think that *In re Ismail bin Rentah*,[6] the case relied on by the guardian *ad litem*, can have any effect on my view because first, that case was a decision on the Co-operative Societies Federated Malay States Enactment No. 7 of 1922 and, secondly, because in the Federated Malay States then there appeared to be nothing corresponding to section 23 of the Civil Law Ordinance, 1956, or at least there was no reference to such a provision in the judgment.

Nor can I accept the guardian's argument that the assignment must be regarded as a will to an heir and therefore void in the absence of consent of the other co-heir, because to do so would be to ignore the clear statutory provisions of the Civil Law Ordinance.

As I base my judgment on these provisions there is no need for me to deal with the case relied on by counsel for the wife, *Sadiq Ali* v. *Zahida Begam* [7]

In the event it is hereby declared that the policy money belongs to the widow beneficially and does not form part of her husband's estate.

Assignment held valid.

Solicitor: *Oo Gin Sun.*

LEE SOCK GOH v. STRAITS CABARET (1953) LTD.

[O.C.J. (Ambrose J.) January 2, 1965]

[Singapore — Suit No. 990 of 1964]

Procedure — Estoppel per rem judicatam — Whether operative to preclude person from claiming benefit of Control of Rent Ordinance — Election — General rule forbidding approbation and reprobation.

On July 5, 1955 the defendants obtained judgment by consent against the plaintiff for recovery of possession of premises which had been damaged by bombs at the end of 1941, and repaired and renovated or rebuilt in 1952 and 1953. On April 24, 1964 they obtained an order for possession and the appeal of the plaintiff against this order was dismissed. The plaintiff instituted proceedings on June 22, 1964 to set aside the consent judgment. To this action the defendants raised the defence of estoppel.

Held: (1) the final judgment of a court of competent jurisdiction is conclusive between the parties on any question put in issue and decided by it and this principle